CF0000064288

"allotted by the High Court Legal Services Committee"

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

CRIMINAL APPEAL No.2257/2000

APPELLANT .... BHUNESHWAR SATNAMI
(IN JAIL) S/o. DHAN SINGH SATNAMI
AGED ABOUT 25 YEARS
VILLAGE SUDHELA P.S. BALAUDA BAZAR
DISTT. RAIPUR (M.P.)

VERSUS

NON APPLLANT ... STATE OF M.P.

9472

5/9/2001 A.K.

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

XI-HC-78

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... (Cr.A.2257) **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

13-2-2007

Mr. Surya Kant Mishra, counsel for the appellant.

Mr. Ashish Shukla, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais.*

Per Dhirendra Mishra, J.: -

The appellant has preferred this appeal under Section 374 (2) of the Code of Criminal Procedure against the judgment dated 13-6-2000 passed in Sessions Trial No.58/2000 by the 2nd Additional Sessions Judge, Baloda Bazaar, whereby learned Additional Sessions Judge holding the appellant guilty of causing death of Takeshwar, aged 2 years, has convicted the appellant under Sections 452, 302 & 307 of the I.P.C. and sentenced him to undergo R.I. for three years and pay a fine of Rs.500/-, to undergo imprisonment for life and pay a fine of Rs.1,000/-, and to undergo R.I. for seven years and pay a fine of Rs.1,000/-, respectively, with usual default stipulation.

Case of the prosecution, in brief, is that the appellant used to pass obscene overtures towards mother of the deceased Savita (PW-2), it was objected to by Savita as also by her husband and in this respect a Panchayat

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आदेश पत्रक (पूर्वानुबद्ध)

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was convened where a compromise was arrived on 2-10-1999 of Ex.P-18 by which the appellant assured that henceforth he would not be teasing Savita. On 4-12-1999 at about 4 p.m. to 5 p.m. the appellant armed with an axe entered into the house of Savita and assaulted Savita, at that time, Savita was holding her two year old deceased child on her lap. The appellant assaulted them by axe as a result of which Savita sustained grievous injuries over parietal region and left cheek. Deceased Takeshwar also sustained three incised injuries over his head and died instantaneously.

Report was lodged by the husband of Savita namely, Bhagchand (PW-1) on the same day at about 20:30 hours in Police Station: Baloda Bazaar on the basis of which offence No.272/99 was registered against the appellant vide Ex.P-1. Savita was sent for medical examination to Primary Health Centre, Baloda Bazaar, where Dr. Pramod Tiwari (PW-4) found three incised wounds over the head region as described in the M.L.C. report of Ex.P-3 who advised X-ray of skull. Inquest over the dead body of deceased Takeshwar was prepared in the presence of the witnesses vide Ex.P-17. The body of deceased Takeshwar was sent for post-mortem to Primary Health Centre, Baloda Bazaar, where Dr. R.S. Tiwari (PW-15) conducted post-mortem over the person of the deceased and submitted his post-mortem report of Ex.P-27. In the post-mortem report, the doctor found one incised wound situated over head on the occipital region of size 7 cms. x 2 cms. x 1 cm. bone deep; incised wound over right ear of size 4 cms. x 1 cm. x $\frac{1}{4}$ cm. on the lower part; incised wound vertical over right scapular region of size 8 cms. x 3 cms. x $\frac{1}{4}$ cm. The doctor opined the cause of death of the child due to comma as a

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result of injury No.1 over the head produced by some hard and sharp object and the same was homicidal in nature.

Bed head ticket and other treatment papers of Ex.P-5 of Savita were taken into possession vide seizure memo Ex.P-22. Site plan of Ex.P-9 was prepared. Weapon of offence axe was taken into possession vide seizure memo of Ex.P-16 from the house of the complainant. Blood stained seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur, vide Ex.P-24. Report of the FSL is Ex.P-26.

After completing investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Baloda Bazaar, who in turn committed the case to the Sessions Judge, Raipur and the same was received on transfer for trial by the learned 2nd Additional Sessions Judge, Baloda Bazaar.

Learned Sessions Judge framed charge under Sections 307, 302 and 452 of the I.P.C. against the appellant who abjured his guilt. The prosecution in order to establish its case examined 16 witnesses. Thereafter, statement of the accused under Section 313 of the Cr.P.C. was recorded in which the appellant denied the circumstances appearing against him, pleaded innocence and false implication. Learned Additional Sessions Judge by the impugned judgment convicted the appellant and sentenced as above.

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आदेश पत्रक (पूर्वानुबद्ध)

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Learned counsel for the appellant submits that from perusal of the statement of Savita (PW-2) it would be evident that she has claimed that she was alone present in the house when the incident occurred, however, Mantora (PW-3) claims to be the eyewitness of the said incident, as such, there is contradiction with respect to the presence of the witnesses at the time of the incident. It is further argued that the appellant has also sustained injuries in the incident, he had tried to commit suicide and further he was prosecuted under Section 309 of the I.P.C. also. It is further argued that the genesis of the offence has been deliberately suppressed by the prosecution, in fact the appellant had gone to the house of Savita as Savita owed a sum of Rs.5,000/- to Rs.6,000/- to the appellant and in view of this animosity, the appellant has been roped in the case. There is no motive for the appellant to kill the two year old child. In the aforesaid circumstances the appellant be acquitted.

On the other hand, learned Additional Public Prosecutor for the State/respondent supports the judgment of the trial Court.

We have heard learned counsel for the parties and perused the charge sheet, as also the evidence produced by the prosecution to the trial. From perusal of the document of Ex.P-18 which has been duly proved by Kaliram (PW-11) it is observed that the appellant used to tease the wife of Bhagchand, the complainant, for this purpose, a Panchayat was convened on 2-10-1999 and in the said Panchayat, the appellant admitted that he had tried to elope with Savita and a report to that incident was to be made,

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आदेश पत्रक (पूर्वानुबद्ध)

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	however, on the basis of that incident, the Panchayat was convened and in the said Panchayat a compromise deed of Ex.P-18 was drawn in which the appellant had promised that he shall not repeat his act in future. The first information report Ex.P-1 has been proved by Bhagchand (PW-1), husband of Savita and father of the deceased who has stated in his deposition that the appellant used to tease his wife since last 6-7 months, a Panchayat was convened against the appellant and in the said Panchayat, he had assured that henceforth he will not see Savita with any evil desire. On the date of incident when he had gone to the field with his father and his wife had returned home to feed the baby, he was informed by Manohar that something has happened in his house, whereupon he returned to his house and saw that his wife was standing in front of the door with injuries over her cheek & head, when he went inside the house, he found his child Takeshwar dead, he had sustained injuries over his right ear and his brain matter has come out. Thereafter, he lodged the report of Ex.P-1. In cross-examination of this witness, defence could not elicit anything which discredits the statement of this witness. Savita (PW-2), injured witness, has also stated that the appellant used to make obscene overtures towards her, a Panchayat was convened and in the said Panchayat the appellant gave in writing that he shall not tease Savita in future. On the fateful day when her husband & father-in-law had gone to field and she had returned to her home at about 3.30 p.m. and she was feeding her baby, she saw the appellant entered her home with an axe and asked her to elope with him, on her refusal he assulated the child with	

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the axe, she raised an alert that the appellant has killed her child, when she was trying to pick up the child, the accused assaulted her also by the axe on her head, left cheek, and thereafter, she fainted. This witness has also been cross-examined by the defence at length and a suggestion has been given on behalf of the defence that the accused has in fact advanced a loan of Rs.6-7 thousand which has been denied by this witness. Defence has not been able to elicit anything in the cross-examination of this witness which discredits the statement of this witness.

The statement of this witness (PW-2) is duly corroborated by the statement of Mantora (PW-3), sister of Savita, who has also stated that on the date of incident when she was going for grinding flour, at that time, the accused stopped her and said "don't go", he asked her sister to elope with him to which she denied, whereupon the appellant said that if she will not elope with him he would kill her and her daughter and assaulted by axe. He also assaulted the son of Savita and he gave three axe blows. Thereafter, he assaulted her sister over her head and cheek by axe. In the cross-examination of this witness, defence has not been able to elicit the credibility of this witness, and the omissions present in the statement of this witness are insignificant.

Statement of the above two eyewitness (PW-2 & PW-3) are duly corroborated by the statement of PW-1, as also by the promptly lodged first information report. From the document of Ex.P-18 and the statement of Kaliram (PW-11) which find corroboration from the statement of PW-1, PW-

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2 & PW-3 also the fact that the appellant had made obscene advances towards Savita in the past, is established. As already mentioned, on the date of incident also the appellant made advances towards Savita in the presence of Mantora (PW-3) and on being unsuccessful in his attempt he dealt lethal blow on the deceased which resulted in the death of two years old child Takeshwar, he also attempted on the life of Savita by assaulting her over her head. These assaults were admittedly made inside the house of Savita where the appellant had gone with a preparation to commit offence.

Therefore, in the considered opinion of this Court, the Court below after meticulously examining the evidence available on record has held the appellant guilty and sentenced as described above which is based on proper appreciation of evidence available on record and which does not call for interference.

In the result, the appeal preferred by the appellant against the impugned judgment is devoid of substance, same deserves to be dismissed and is accordingly, dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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